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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

CASE NO. 13-cr-3170-GPC

**Plaintiff.**

12 || vs.

**ORDER DENYING DEFENDANT'S  
REQUEST FOR  
REIMBURSEMENT OF  
TRANSPORTATION EXPENSES**

**(ECF NO. 88.)**

ELENA IBARRA,

Defendant.

## I. INTRODUCTION

This matter comes before the Court on Elena Ibarra’s (“Defendant”) Request for Reimbursement of Transportation Expenses. (ECF No. 88, “Request for Reimbursement”.) Defendant requests reimbursement for hotel and subsistence costs expended by counsel for Defendant while she remained in San Diego, California in order to attend trial and for transportation home after the trial ended. (ECF No. 88 at 1.) The United States of America (“Plaintiff”) has filed a response in opposition to Defendant’s Request for Reimbursement. (ECF No. 90.) A hearing was held on August 21, 2014. Defendant waived her appearance but was represented by her attorney, John Ellis, and the Government was represented by Assistant U.S. Attorney Patrick Bumatay. For the reasons set forth below, the Court **DENIES** Defendant’s Request for Reimbursement.

## 1 II. BACKGROUND

2 On June 21, 2013, Defendant was arrested at the U.S. Border Patrol Checkpoint  
3 on Highway 86 near Westmorland, California for driving a vehicle loaded with 3.86  
4 kilograms of methamphetamine. Defendant, a resident of Calexico, California, was  
5 charged with Possession of Methamphetamine with Intent to Distribute in violation of  
6 Title 21, United States Code, § 841(a)(1) in Case No. 13-CR-2641. Defendant filed a  
7 financial affidavit indicating that she was employed as a care provider and earned  
8 approximately \$200 and received \$194 in food stamps per month. Finding Ms. Ibarra  
9 indigent, the Court appointed Federal Defenders, Inc. to represent Ms. Ibarra. On June  
10 26, 2013, Ms. Ibarra was released from custody on a \$10,000 personal surety bond and  
11 returned to her home in Calexico. The case was eventually set for trial commencing  
12 on June 23, 2014.

13 On June 16, 2014, at the request of the Defendant, the Court issued an order  
14 directing the United States Marshal's Service to cover Ms. Ibarra's travel from Calexico  
15 to San Diego and lodging during the course of trial. (ECF No. 58.) Thereafter, on June  
16 17, 2014, the Court filed an amended order, pursuant to 18 U.S.C. § 4285, requiring the  
17 U.S. Marshal: (1) to provide one-way, non-custodial travel and subsistence from  
18 Calexico, California to San Diego, California in order to allow Ms. Ibarra to appear at  
19 all required court appearances; or (2) furnish her fare for such travel and subsistence  
20 by reimbursement to Ms. Ibarra upon provision of receipts. (ECF No. 61.)

21 Trial commenced on June 23, 2014 and concluded on June 26, 2014 when Ms.  
22 Ibarra was found guilty of possession of methamphetamine with intent to distribute.  
23 At no time prior to or during the trial did Defendant notify the Court that she was  
24 without lodging in San Diego, or ask the Court to modify its trial schedule in order to  
25 accommodate Ms. Ibarra and her proposed travel schedule. Instead, Federal Defenders  
26 arranged for Ms. Ibarra to stay at a downtown San Diego hotel at a cost of \$400 and  
27 paid for Ms. Ibarra's bus ticket to El Centro. On July 11, 2014, Defendant filed the  
28 instant motion seeking reimbursement for expenses for her lodging in San Diego and

1 for bus transportation from San Diego to Calexico.

### 2                   **III. DISCUSSION**

3                   The Defendant seeks reimbursement of her lodging and travel expenses based  
 4 on her Fifth Amendment right to due process and equal protection and her Sixth  
 5 Amendment right to present a meaningful defense. She contends that the necessary  
 6 funds are available from any one of the following sources: (1) the Criminal Justice Act,  
 7 18 U.S.C. § 3006A; (2) the All Writs Act, 28 U.S.C. § 1651; or (3) the U.S. Attorney's  
 8 Office. (ECF No. 88 at 4.)

9                   **A. 18 U.S.C. § 4285**

10                  18 U.S.C. § 4285 provides that when an indigent defendant is released pending  
 11 a court appearance, a judge "may, when the interests of justice would be served  
 12 thereby" direct the Marshal to arrange for or pay for transportation "to the place where  
 13 his appearance is required" and "furnish [defendant] with an amount of money for  
 14 subsistence expenses to [her] destination, not to exceed the amount authorized as a per  
 15 diem allowance for travel under section 5702(a) of title 5, United States Code." § 4285  
 16 authorizes only an order directing the Marshal to transport defendants to court. It does  
 17 not provide judicial authority to require payment for lodging or food during a trial. The  
 18 legislative history of § 4285 authorizes the payment of subsistence expenses "for the  
 19 time during which the defendant is actually travelling." See H.R.Rep. No. 95-1653,  
 20 95th Cong., 2d Sess. at 3 (1978), U.S.Code Cong. & Admin.News 1978, pp. 3732,  
 21 3733 ("Subsistence shall terminate upon arrival at the defendant's destination and shall  
 22 not continue throughout the defendant's stay at that destination."). Numerous courts  
 23 have concluded that § 4285 does not authorize the United States Marshals Service to  
 24 provide subsistence expenses to a defendant for lodging during a trial, nor for travel  
 25 back to his or her residence. United States v. Centeno, No. 09CR3120-L, 2009 WL  
 26 3334144, at \*1 (S.D. Cal. 2009); United States v. James, 762 F. Supp. 1, 2 (D.D.C.  
 27 1991) ("while the statute authorizes payment to travel to the court, once at the site of  
 28 the court, the statute does not authorize payment of subsistence during the course of the

1 trial or hearing"); United States v. Haley, 504 F.Supp. 1124, 1129 (E.D.Pa.1981)  
 2 ("[T]he statute does not authorize subsistence funding for defendants once they arrive  
 3 at the place of trial and during trial, which could be extended."); United States v.  
 4 Sandoval, 812 F.Supp. 1156, 1157 (D. Kan.1993) ("[W]hile the court may require the  
 5 Marshal to provide money for subsistence during transit, this statute does not authorize  
 6 the court to enter an order requiring the Marshal to provide money for subsistence upon  
 7 reaching [the place of trial.]").

8 In this case, the Amended Order for Reimbursement complied with § 4285 and  
 9 Ms. Ibarra does not claim that § 4285 provides a statutory basis to cover her expenses.

#### 10 **B. Reimbursement under the Criminal Justice Act**

11 The Criminal Justice Act provides, in relevant part: "Counsel for a person who  
 12 is financially unable to obtain investigative, expert, or other services necessary for  
 13 adequate representation may request them in an ex parte application." 18 U.S.C.  
 14 § 3006A (emphasis added). The language of § 3006A does not identify lodging or  
 15 transportation as a service "necessary for adequate representation." Defendant seeks  
 16 reimbursement from the Criminal Justice Act funds on the theory that her lodging and  
 17 round-trip transportation expenses are covered as "other services necessary for an  
 18 adequate representation."

19 In response, the government asserts that the Criminal Justice Act "was not  
 20 created to provide defendants reimbursement for all costs associated with trial, but to  
 21 ensure the protection of their right to 'adequate representation' under the Sixth  
 22 Amendment. (ECF No. 90 at 8) (quoting 18 U.S.C.A. § 3006A).

23 Defendant relies on United States v. Mendoza, 734 F. Supp. 2d 281 (E.D. N.Y.  
 24 2010) to support her position. In Mendoza, the trial court was faced with defendants  
 25 who lived in California and were charged in New York. 734 F. Supp. 2d at 282. By  
 26 the time of trial, defendants were unemployed and could not afford to travel to the court  
 27 in New York. Id. at 283. The Mendoza court construed the term "other services"  
 28 broadly to include lodging for a defendant during trial. The court observed that

1 payment for lodging for a defendant who would otherwise be homeless could be said  
 2 to be necessary "for an adequate representation" because a defendant who sleeps on the  
 3 streets is not going to be fit for a trial the next morning. Id. at 282. The court admitted  
 4 that its interpretation was tortured and reluctantly authorized payment for lodging from  
 5 the Criminal Justice Act funds because lodging was necessary for adequate  
 6 representation under § 3006A.

7 Meanwhile, in the instant case, Defendant was charged in the Southern District  
 8 of California, the district where she resides and committed the crime for which she was  
 9 prosecuted and convicted. She asserts that she concluded that she had no options but  
 10 to stay in San Diego during trial given that the first bus from Calexico arrived in San  
 11 Diego at 9:50 a.m. However, had Ms. Ibarra notified the Court that she lacked funds  
 12 for lodging, the Court would have sought to identify a workable solution, including  
 13 possible Pretrial Services temporary accommodations under 18 U.S.C. § 3154(4)<sup>1</sup> or  
 14 moving the start time of trial from 9:00 a.m. to 10:30 a.m. The Court recognizes that  
 15 starting trial later in the morning is not an efficient use of court resources or of the  
 16 jury's time, however in cases such as this, it was an option.

17 The dilemma presented in Ms. Ibarra's case is not new. In 1993, the Committee  
 18 to Review the Criminal Justice Act (the "Prado Committee") conducted a  
 19 comprehensive analysis of the CJA program in order to recommend appropriate  
 20 legislative, administrative and procedural changes. The Prado Committee noted the  
 21 lack of any provision for subsistence expenses, or even for return travel. See Report of  
 22 the Committee to Review the Criminal Justice Act of 1964, Recommendation D-2.  
 23 The Judicial Conference then recommended that 18 U.S.C. § 4285 "be amended to give  
 24 the presiding judge discretion in appropriate circumstances to order that funds be

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25  
 26 <sup>1</sup>The Pretrial Services Act, 18 U.S.C. §§ 3152–3156, requires the Pretrial Services Agency to  
 27 provide food and shelter to indigent defendants during trial. See United States v. Gunderson, 978 F.2d  
 580, 584–85 (10th Cir. 1992); see also United States v. Stone, 2012 WL 345267, at \*2 (E.D. Mich.  
 28 Feb. 1, 2012); United States v. Nave, 733 F.Supp. 1002, 1003 (D.Md. 1990) (noting indigent  
 defendants may "make arrangements through the Pre-Trial Services Agency for lodging in some  
 appropriate facility, such as a half-way house").

1 provided to CJA eligible person for travel to and from court proceedings and related  
 2 consultations and for subsistence during court and related proceedings.” Report of the  
 3 Judicial Conference of the United States on Federal Defender Program, March 1993,  
 4 at 35. In the Mendoza case, Judge Gleeson observed that many years after the 1993  
 5 Judicial Conference recommendation, the subsistence gap remained unfilled and called  
 6 upon Congress to fill the travel expense void. Mendoza, 734 F. Supp.2d at 287. To  
 7 date, the problem remains unsolved. However, the Court concludes that in the present  
 8 case, options existed to avoid violating any due process or equal protection rights of  
 9 the Defendant. While those options would have created inefficiencies, they do not rise  
 10 to the level requiring the Court to rely on § 3006(A) as the basis for reimbursement.

11 **C. Reimbursement under the All Writs Act**

12 Next, Defendant seeks reimbursement of travel expenses under the All Writs  
 13 Act, 28 U.S.C. § 1651. Defendant argues that the Court has inherent power to remedy  
 14 constitutional violations when an effective statutory remedy is absent under the  
 15 authority of Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics,  
 16 403 U.S. 388, 392 (1971) (“where federally protected rights have been invaded, it has  
 17 been the rule from the beginning that courts will be alert to adjust their remedies so as  
 18 to grant the necessary relief”) The Defendant continues that the All Writs Act  
 19 authorizes the Court to take the requested action necessary to aid in exercise of its  
 20 jurisdiction. (ECF No. 92-1 at 5.)

21 The Government argues that the All Writs Act is an extreme remedy and does  
 22 not apply in the instant case. See Lampman v. United States Dist. Court for Cent. Dist.,  
 23 418 F.2d 215, 217 (9th Cir. 1969). The Court finds that the Defendant has failed to  
 24 prove that her federal protected rights were invaded in this case or that exceptional  
 25 circumstances exist to justify the extreme remedy of the All Writs Act.

26 **D. Reimbursement by the Government**

27 Lastly, the Defendant requests that the Court direct the Government to provide  
 28 reimbursement funds under the holding in United States v. Badalamenti, 1986 WL

1 8309 (S.D.N.Y. July 22, 1986). In Badalamenti, the defendants were residents of  
2 Illinois and were prosecuted in New York in a vast conspiracy trial that lasted more  
3 than a year. In that case, the court directed the government to provide lodging or to pay  
4 for it given the "extraordinary circumstances of [that] trial" where the defendant was  
5 "required to attend trial a thousand miles from his home for over a year...." 1986 WL  
6 8309, at \*2.

7 The current case does not present such extraordinary circumstances. The entire  
8 trial lasted three days and Defendant was required to travel approximately 120 miles  
9 one way to be present at trial, rather than 1,000 miles. Cf. United States v. Stone, 2012  
10 WL 345267, at \*2 (E.D.Mich. Feb. 1, 2012) (extreme circumstances absent where trial  
11 scheduled to last no longer than eight weeks and Defendants would have to travel  
12 between 75 and 115 miles one way to be present). Moreover, Defendant failed to raise  
13 the lodging issue prior to incurring the lodging expenses and, thus, denied the Court  
14 the opportunity to explore solutions that would have avoided the lodging expenses.  
15 Given these circumstances, the Court DENIES the request to require the Government,  
16 as the prosecuting authority, to reimburse the Defendant for her lodging and return  
17 travel expenses.

18 **IV. CONCLUSION AND ORDER**

19 For the reasons set forth above, **IT IS HEREBY ORDERED** that the Court  
20 DENIES Defendant's Request for Reimbursement, (ECF No. 88).

21 **IT IS SO ORDERED.**

22 DATED: September 2, 2014

23   
24 HON. GONZALO P. CURIEL  
25 United States District Judge  
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